

REMARKS

A new abstract page is supplied, typed on a separate page, to conform to U.S. practice.

Applicants respectfully request that the preliminary amendment described herein be entered into the record prior to calculation of the filing fee and prior to examination and consideration of the above-identified application.

Present claims 9 to 13 correspond to canceled claims 14 to 18 of the parent application No. 09/806,989, filed on of October 5, 1999. The parent application is still pending.

In an Office Action in the parent application dated December 18, 2002, the Examiner rejected the pharmaceutical composition claims under 35 U.S.C. § 102 as being anticipated by prior art references that teach pharmaceutical compositions comprising, for example, nitroglycerin, nicorandil, SNAP, or sodium nitroprusside. Compositions that have a tendency to release nitric oxide in the liver are not within the scope of Applicant's claims. Applicant's claims are directed to compositions that have been structurally modified to preferentially release nitric oxide in the liver. None of the prior art references teach a pharmaceutical composition comprising a nitric oxide donor or a nitric oxide agonist that has been structurally modified to preferentially release nitric oxide in the liver. Therefore, the prior art references cited by the Examiner do not anticipate Applicant's claims.

In the same Office Action, the Examiner rejected Applicant's kit claims (present claims 11 to 13), under 35 USC § 103(a). The Examiner maintained it would have been obvious for one skilled in the art to modify the compositions in the prior art into a kit since one of ordinary skill in the art would reasonably expect kit compositions to be a useful means for packaging pharmaceutical compositions for subsequent use in therapeutic treatment.

Applicant's claims, however, recite instructions for the administration of the nitric oxide donor or nitric oxide agonist to ameliorate the symptoms of insulin resistance. Applicant was the first to recognize the utility of these compounds in ameliorating the symptoms of insulin resistance. Absent Applicant's disclosure, one skilled in the art, would not have been motivated to package the claimed compositions with instructions to use those compositions for ameliorating the symptoms of insulin resistance. Thus, it is respectfully submitted that the present claims are not obvious in view of the prior art.

The Examiner also asserted the instructions for using the nitric oxide donor or agonist compositions related to intended use and does not further limit or define the overall pharmaceutical compositions. Applicant has amended the kit claims such that they are now combination claims. As combination claims, the instructions for administration are clearly an element of the claimed combination.

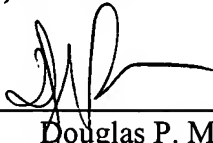
Conclusion

In view of the Remarks presented herein, favorable consideration in the form of a Notice of Allowance is respectfully requested. If a telephone conference would be helpful in resolving any issues concerning this communication, please contact Applicants' primary attorney-of-record, Douglas P. Mueller (Reg. No. 30,300), at (612) 371.5237.

Respectfully submitted,

MERCHANT & GOULD P.C.
P.O. Box 2903
Minneapolis, Minnesota 55402-0903
(612) 332-5300

Dated: January 21, 2004

By 
Douglas P. Mueller
Reg. No. 30,300

DPM/EED/pjk

